

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D., ET AL.,)	CASE NO: 2:11-CV-0084
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
GOVERNOR RICK PERRY, ET AL.,)	Wednesday, December 3, 2014
)	(3:59 p.m. to 5:28 p.m.)
<u>Defendants.</u>)	

DIRECT EXAMINATION OF VIOLA MILLER
DURING TRIAL - DAY 3

BEFORE THE HONORABLE JANIS GRAHAM JACK,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
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Corpus Christi, Texas; Wednesday, December 3, 2014; 3:59 p.m.

(Partial transcript; Direct Examination of Dr. Viola Miller)

THE CLERK: All rise.

THE COURT: Be seated. Would you -- let's see. Call your next witness.

MR. YETTER: Your Honor, on behalf of the Plaintiff children, we call Dr. Viola Miller.

THE COURT: Thank you.

MR. YETTER: She is, as the Court probably knows, she's our ninth witness for today. We've made lots of progress.

THE CLERK: Please raise your right hand.

DR. VIOLA MILLER, PLAINTIFFS' WITNESS, SWORN

MR. YETTER: May it please the Court.

DIRECT EXAMINATION

BY MR. YETTER:

Q Good afternoon.

A Good afternoon.

Q Would you please re-introduce yourself to the Court, please?

A My name is Viola Miller.

Q Dr. Miller, the last time you were here was two years ago I believe, was it not?

A That's correct.

Q And you did testify at the class certification hearing?

Miller - Direct / By Mr. Yetter

5

1 A Yes, I did.

2 Q We're going to go through your background only at a high
3 level both for the record and just to kind of refresh the
4 Court.

5 MR. YETTER: Your Honor, I have --

6 THE COURT: Have you got her CV and the --

7 MR. YETTER: I do. We're going to --

8 THE COURT: -- and the report?

9 MR. YETTER: We will offer -- first offer her report,
10 Plaintiffs' 2037. And the CV, which I've taken out separately,
11 your Honor, is Appendix A to her report. And I can provide the
12 Court with a copy of the CV if you'd like -- her resume.

13 THE COURT: Yes.

14 MR. ALBRIGHT: And your Honor, we --

15 THE COURT: Is it attached?

16 MR. YETTER: It is Appendix A but I've take it out so
17 that you can look at the CV separately.

18 THE COURT: No, no. It goes as an exhibit.

19 MR. YETTER: It is --

20 THE COURT: If you take it out, it's not numbered.

21 MR. YETTER: It is part of Exhibit 2037.

22 MR. ALBRIGHT: Your Honor, for the record, we object
23 to Plaintiffs' Exhibit Number 2037, the report, on the basis
24 that it's hearsay.

25 THE COURT: Thank you.

1 **MR. ALBRIGHT:** And a proper foundation for an
2 exception to the hearsay rule has not been established.

3 **THE COURT:** Thank you. I'm going to go ahead and
4 admit it just like I'm going to do with your expert reports and
5 CV's.

6 **MR. ALBRIGHT:** I know. Just keeping the record on
7 it, Judge.

8 **THE COURT:** I appreciate it. 2037 is admitted.

9 **(Plaintiffs' Exhibit Number 2037 was received in evidence)**

10 **THE COURT:** Is this the doctor that interviewed the
11 children individually?

12 **MR. YETTER:** No. That -- we have a psychologist --

13 **THE COURT:** Okay.

14 **MR. YETTER:** -- and a social worker that both did
15 that.

16 **THE COURT:** Okay.

17 **MR. YETTER:** And I'm going to hand this to you.
18 (indiscernible), your Honor, I have paper clipped the CV if
19 you'd like to turn to that.

20 **BY MR. YETTER:**

21 Q Dr. Miller, let's frame kind of who you are and what your
22 testimony is today. What is your expertise?

23 A I was the Chief Executive Officer of two different child
24 welfare agencies. One in Kentucky, one in Tennessee. During
25 the time in both states, we went through major child welfare

1 reform initiatives.

2 Q And for how many years have you been involved in child
3 welfare issues on behalf of the state or in private consulting?

4 A Well, I've been -- I've worked with children and families
5 for over 40 years.

6 Q Are you here -- do you believe that you have an expertise
7 over those 40 years of experience in your education and your
8 professional occupation, have an expertise in child welfare
9 system matters?

10 A Absolutely.

11 Q So let's take a step back and get a little bit more of
12 your background. Where do you live today, ma'am?

13 A I live in Nashville, Tennessee.

14 Q Dr. Miller, the last time you were here, you were anxious
15 about the birth of a -- your first grandchild?

16 A That's correct.

17 Q I'm assuming that happened and it was uneventful.

18 A Yes, it happened, and it was uneventful. And she is a
19 little red head and she's almost two years old. And she lives
20 into both of those stereotypes.

21 Q That's great. And do you enjoy being a grandmother?

22 A It's the most wonderful thing that's ever happened to me.

23 Q You've told your --

24 **THE COURT:** It's another chance.

25 **THE WITNESS:** It is. It really is. And she's pretty

1 crazy about her grandma, too.

2 **BY MR. YETTER:**

3 Q Okay.

4 **THE COURT:** I have a red head, too. Seven year olds.

5 **THE WITNESS:** Mine is a red head, too.

6 Q All right. So, now let's move to your education if we
7 could. Just -- let's just briefly give us an overview of your
8 degrees and the institutions that you studied at.

9 A My undergraduate degree was from Northwest --

10 **THE COURT:** Okay. Wait a minute. I don't want to do
11 this. That's why I admitted all these things so we could cut
12 to the chase.

13 **MR. YETTER:** All right.

14 **THE COURT:** And save her breath.

15 **BY MR. YETTER:**

16 Q Let's just go to the punch line, then. Your Ph.D. is in
17 what specialty?

18 A Special education, severe (indiscernible) disabled
19 children.

20 Q Now, professionally, have you been working in the child
21 welfare system profession for most of these past 40 years?

22 A I've been working with families and children the last 15
23 years of my career before I retired. Eight years in Kentucky,
24 I was the secretary of the Cabinet for Families and Children in
25 the Paul Patton (phonetic) administration. And --

1 Q Let's -- let me stop you there.

2 A Okay.

3 Q What years were those?

4 A They were from 1996 to 2003.

5 Q Okay.

6 A Or 1995 to 2003.

7 Q And as the secretary on the Cabinet for Families and
8 Children, what was your primary responsibility?

9 A That -- the Cabinet for Families and Children was a
10 comprehensive human service agency. And we had, of course,
11 public child welfare was one of our largest area. We had TANF
12 -- Temporary Assistance for Needy Families. We had Medicaid
13 eligibility. We had disabilities determination. And we had
14 the SNAP program. Back then it was food stamps.

15 Q So just focusing on where we are today, was one of the
16 programs child protective services --

17 A That's correct.

18 Q -- that you were responsible for?

19 A That's correct.

20 Q Very same system -- program that we're talking about here
21 in this case?

22 A Right. A very similar structure.

23 **MR. ALBRIGHT:** Objection. Your Honor? Can I object
24 to leading? The very same system as Texas, I object it's
25 leading and vague and ambiguous.

1 **BY MR. YETTER:**

2 Q How would you --

3 **THE COURT:** Well, that's sustained.

4 Q How would you compare the -- that system, that child
5 protective services system in Kentucky that you were
6 responsible for, for those eight years, in general as a system,
7 to the system here in Texas?

8 A Well, we -- in Kentucky, we had about seventy-five hundred
9 children in care and we had a budget of slightly less than a
10 billion dollars.

11 Q Were you on the cabinet in the executive branch of the --

12 A Yes, I reported --

13 Q -- state government?

14 A -- directly to the Governor.

15 Q That was Kentucky?

16 A That's correct.

17 Q And you were -- I interrupted you and you were about to
18 move to your next similar position. I believe it was in
19 Tennessee. And tell us what your title was there.

20 A That's correct. My title there was Commissioner of the
21 Department for Children Services.

22 Q And if you were eight years in Kentucky, how many years
23 were you in Tennessee?

24 A I was seven years there.

25 Q And as the Commissioner in the Department of -- well, what

1 was the Department of Children's Services in Tennessee at the
2 time?

3 A That was exclusively a child welfare agency.

4 Q And as a system, how would you compare the system -- the
5 Department of Children Services in Tennessee to what we are
6 talking about here, the Department of Family and Protective
7 Services here in Texas?

8 A Well, the Department for Family and Protective Services in
9 Texas has a number of other units and their child protective
10 service is a unit under that. In Tennessee, we were a free
11 standing department.

12 Q And were you focused on foster children in Tennessee?

13 A We did foster -- we did foster care, adoption. We did
14 investigations. We also had a multiple response system that
15 was a part of -- and we called that part of the agency was --
16 was for us, CPS. The nomenclature is a little bit different
17 than Texas. We were -- that -- just our investigations and
18 multiple response systems, that was our child protective
19 service piece and then our foster care adopt was our permanency
20 piece.

21 Q So here, in Texas, the Commissioner of the DFPS is
22 Commissioner Specia (indiscernible)?

23 A That's correct.

24 Q And who would have been -- during these eight years in
25 Tennessee, who would have been the equivalent person in the

1 Tennessee Department of Children's Services?

2 A That was me.

3 Q And the prior eight years in Kentucky, who would have been
4 the equivalent person to Commissioner Specia in the Kentucky
5 Cabinet for Families and Children?

6 A That would have been me.

7 Q Since -- when did you -- when was the last year that you
8 were heading up the Tennessee Children's -- Child Protective
9 Services and related things that you talked about?

10 A 2011 -- January of 2011.

11 Q In the last three years, what have you professionally been
12 focused on?

13 A In the last three years, I have been retired and I have --
14 but I have done some consulting work and I've done a bit on
15 foster care review board which has been really fun for me
16 because in my -- when I was working professionally in the area,
17 I couldn't have done that. And I also spend some of my time --
18 I'm working a great deal with an agency in Nashville. It's
19 called Renewal House. I'm on their board and a chairman of
20 their program committee. And what that agency does, it would
21 work with essentially all child welfare families because it's a
22 facility where addicted mothers can come for treatment and
23 bring their children as an alternative for those children
24 having to go in foster care. So I've been spending quite a bit
25 of my volunteer time with that agency.

1 Q Okay. You said -- well, you said three years ago, you
2 retired?

3 A That's correct.

4 Q Okay. But you're -- you're doing the National House
5 [sic]. What's your position with them? Your -- you said you
6 were involved

7 A That was Renewal House.

8 Q Renewal House. I'm sorry. Renewal House in Nashville.

9 A Yes. Now, I -- this is volunteer work. I'm on their
10 board of directors and I chair their program committee. And --

11 Q All right. And professionally you said you've been
12 involved with foster care in certain systems around the
13 country, I believe?

14 A Yes. I -- I still have states calling me, offering me a
15 job and I don't want a job. But what I have done with several
16 other states is try to help them think through how to access
17 the resources that they need. These are -- these are states
18 that are in the process of trying to reform their systems and
19 they're looking for help -- you know, from around the United
20 States. And so, I have done some work trying to -- to help
21 them find the resources because I don't want to be their
22 resource.

23 Q Fair enough. Now, are you acting in a consulting capacity
24 for those states?

25 A Essentially, yes.

1 Q And which states are you talking about?

2 A I've done some work with Massachusetts. I've done some
3 work with Oklahoma. Done -- well, a little bit of work with
4 Illinois but that was different. They are not -- they are not
5 necessarily in a reform process. They were in the process,
6 really, of looking at this -- rethinking performance-based
7 contracting which they've had for a while and some other
8 changes in their system, particularly around creating child and
9 family teams. We really did a lot of work on that in Tennessee
10 and really were quite successful. And that was the area that I
11 was sort of walk -- talking with them about.

12 Q So based on your work in Kentucky and then Tennessee and
13 now in Massachusetts, Oklahoma, and Illinois, have you kept
14 current on what the national standards are for child welfare
15 systems here in our country?

16 A Oh, I certainly think so.

17 Q And today, do you feel current in your expertise in this
18 area?

19 A Yes.

20 Q Now, you've been involved -- let's move to this case.
21 You've been involved -- we've asked you to be involved as a
22 consultant -- consulting expert on our behalf in this
23 litigation for some time, have we not?

24 A That's correct. Probably -- about three years or more
25 now.

1 Q And as part of that, what -- have you been -- what have
2 you been looking at in terms of the structural issues with the
3 Texas foster care system?

4 A Well, the two primary structural issues that you asked me
5 to look at -- one was caseload, workload issues and the other
6 was placement array.

7 Q And, again, have you focused on -- just to be clear, have
8 you focused on any particular subgroup of the foster children
9 here in Texas?

10 A The PMC children. That's the group of kids that we're
11 concerned about.

12 Q And in addition to the caseloads and the placement array,
13 are you familiar with the situation with the GRO's here in the
14 state of Texas?

15 A Yes. Well, that is, in my opinion, a part of the
16 placement array issue. But yes, I am.

17 Q And likewise, is the foster group home as part of the
18 placement array issue --

19 A Yes, it is.

20 Q -- in Texas? Have you come -- and which we will get out
21 shortly -- have you come to conclusions and professional
22 opinions about those areas that you've been asked to look at?

23 A Yes.

24 Q Before we get there, I want to talk a little bit about
25 your methodology and that -- what you've reviewed, but in terms

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1 of the bulk of testimony that you've reviewed, can you just
2 walk us through at a high level, not individual documents. But
3 what are the sorts of -- what sources of data have you reviewed
4 in order to form professional opinions here?

5 A Well, I've reviewed a couple of other expert reports. I
6 have also reviewed just a multitude of data sets that were
7 available, the DFPS data books, transcripts of --

8 Q Can I -- can I stop you as you go so we can make a little
9 (indiscernible)? The data sets that were available? What --
10 from what source did they come?

11 A From DFPS.

12 Q Okay. Go ahead. I interrupted you. Go ahead.

13 A And I completely lost my train of thought.

14 Q You said DFPS --

15 **THE COURT:** You were looking at --

16 **BY MR. YETTER:**

17 Q You said policy --

18 **THE COURT:** -- you were saying that all the documents
19 you reviewed.

20 **THE WITNESS:** Okay.

21 Q Policy manuals.

22 **THE COURT:** And you talked about the expert reports.

23 **THE WITNESS:** Sorry. I'm getting a little old. I'm
24 sorry.

25 **THE COURT:** Expert reports and then DFPS something.

1 **BY MR. YETTER:**

2 Q You said policy manuals I think is what the one I
3 interrupted.

4 A Right. Right. The policy manual. And then, of course, I
5 also reviewed the recent -- both internal and external
6 assessments and evaluations that have been done fairly
7 recently. The Stevens Group Report, the auditor's report, the
8 Sunset Review Commission and that was really in three pieces.
9 The department did a self-study and then there were two pieces
10 of the Sunset -- it's a Sunset Advisory Commission Review.

11 Q Okay. You went through that quickly and I'm just going to
12 take a little bit of time so that we are clear. You said
13 internal and external?

14 A Right.

15 Q Let's start with the internal reviews.

16 A Right. Some of those were budget documents as well.

17 Q So, documents submitted to the legislature for funding
18 that it described?

19 A That's correct.

20 Q You said there was a self-study. What was that, that
21 we're talking about?

22 A That -- the Sunset Review process in Tennessee -- or
23 excuse me -- in Texas as in many states. We had to do the same
24 thing in Tennessee and in Kentucky, requires that the agency
25 complete a self-study that they then submit to that legislative

1 body and then the legislative body does their assessment and
2 reports.

3 Q You said this -- so to -- explain what the Sunset Review
4 was that you reviewed?

5 A That -- that's a legislative process. Typically, in
6 states -- in the states that I've worked in and have been
7 familiar with, this is not an uncommon process. Periodically
8 -- and it goes on a cycle. It can be a three year cycle or a
9 four year cycle or however long. And the legislature reviews
10 the agencies in state government. And that's called a Sunset
11 Review process. And in that process, an agency is very
12 typically asked to do their own self-study of where we are,
13 what we've accomplished, what our issues are, submit that and
14 then there is a -- the -- here, it's called the Sunset Advisory
15 Commission then does their review of the agency and those are
16 -- really, is the basis of the decision about whether -- or at
17 least it was in Kentucky and I don't know what it exactly -- or
18 in Kentucky and Tennessee -- I don't know exactly what it is
19 here. That's the basis on which the legislature makes the
20 decision about whether or not they are going to continue to
21 fund that agency.

22 Q Okay. The Court has heard about the Steven Group Report,
23 but I think we were going to talk a little bit more about it
24 and what was that -- what was that that you reviewed?

25 A The Steven Group Report really was in -- was two different

1 documents. And it was very, very lengthy documents. And they
2 did a -- the department itself asked the Steven Group to come
3 in and do a comprehensive assessment of the agency and to make
4 recommendations for approve -- for change.

5 Q Did you find that to be fairly carefully done and
6 detailed?

7 A Yes, I did. It was -- it was extremely thorough.

8 Q You mentioned in terms of external reports, did you read
9 what was called the K.C. Report?

10 A Yes. That was out of Harris County. They were looking
11 specifically at the Child Protective Services operation in
12 Harris County.

13 Q And these internal and external reports, were they all
14 very recent or did they go back for a few years?

15 A No. These were -- these were very recent. They were all
16 within the last couple of years.

17 Q Okay. As far back as 2010?

18 A No. No. I think the -- I think 2013.

19 Q And the Stevens Group --

20 A I believe I'm right about that. The Stevens Report was
21 within, I think, the last year, year and a half.

22 Q So some of these are just months old? Some of them?

23 A Well, right. Right. Very recent.

24 Q Now, you just kind of walked through these internal and
25 external reports. What other sorts of data or information have

1 you reviewed?

2 A Well, of course, I've listened to the testimony the last
3 few days.

4 Q Here in trial?

5 A Here, in trial, which is -- which has been very helpful.

6 **THE COURT:** Have you been here the whole time?

7 **THE WITNESS:** Not every hour.

8 **THE COURT:** Okay.

9 **THE WITNESS:** But I've been here every day --

10 **THE COURT:** I did see you from --

11 **THE WITNESS:** -- at least some hours.

12 **THE COURT:** -- time to time.

13 **BY MR. YETTER:**

14 Q In addition to the testimony here in Court, did you review
15 any other testimony?

16 A Yes. I reviewed quite a number of depositions. Probably
17 eight or so depositions from regional leadership around the
18 state, the people who were either the -- the regional director
19 or the program administrator from a number of the different
20 regions. I think -- probably eight different regions,
21 something like that.

22 Q On day one, Ms. McCall -- Colleen McCall testified for --
23 on behalf of the DFPS and she -- she had some regional
24 director's report to her? Would you have read those
25 depositions of the regional director?

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1 A Those -- those are the ones that I just was mentioning. I
2 read those regional directors and I also, of course, read
3 McCall's deposition, Emerson Gonzalez, three of the central
4 office leadership.

5 Q Now, in addition to all that you've been reviewing, were
6 there other documents that you -- we provided on behalf of the
7 state that you reviewed, like e-mails and things like that from
8 us?

9 A Oh, yes. There were a number of e-mails and other forms
10 of correspondence -- memos and things like that. There were
11 quite a number of those.

12 Q To what extent did you rely on your personal professional
13 experience in the other systems that you worked and things that
14 -- your experience that you developed?

15 A That's the expertise I bring to this, are those years of
16 experience of actually on the ground reforming a system. And
17 when -- you know, as I looked at these documents, then I
18 brought that experience to bear in trying to interpret and
19 understand and formulate opinions around what was going on in
20 Texas.

21 Q Did you put your opinions and your work into written
22 format and submit a report?

23 A Yes, I did.

24 Q And did you do that both for the class certification
25 hearing and for the trial?

1 A Yes, I did.

2 Q And the more recent report, just by way of dates or time
3 frame, when was it?

4 A It was August 11th, I think.

5 Q Of 2000 --

6 A Fourteen.

7 Q Now, have you also tried to understand the state's
8 position, their response to some of the opinions that you've
9 given and that the Plaintiffs' -- positions that we've taken in
10 this case?

11 A Yes.

12 Q Let's move to some of your opinions. Dr. Miller, starting
13 with case workers. You said one of the primary -- the two --
14 you have two pillars in your opinions. The caseloads and the
15 placement array, I believe. Let's start with the caseloads.

16 **MR. ALBRIGHT:** Your Honor, just for clarification,
17 are we following the same procedure as we discussed before with
18 respect to our ability to lodge an objection at the conclusion
19 of the case and through argument?

20 **THE COURT:** Okay.

21 **MR. ALBRIGHT:** I mean, I thought your Honor said
22 basically do your Daubert --

23 **THE COURT:** Is this in the category of ma'am, that I
24 forgot?

25 **MR. ALBRIGHT:** Well, I think you basically said just

1 wait and do your Daubert later.

2 **THE COURT:** Oh, if you want to take her on voir dire,
3 now, you may.

4 **MR. ALBRIGHT:** No. I thought -- I thought what you
5 had suggested the other day was that in a bench --

6 **THE COURT:** What I usually do in a trial to the Court
7 is this -- instead of going through lengthy Daubert hearings or
8 Daubert or however it's pronounced -- the witness gets to
9 testify, you cross examine or take her on voir dire any way you
10 want, and then you make your challenges at the conclusion. And
11 you have to assume that I know pretty much what's what anyway.
12 I'm pretty good with experts, actually.

13 **MR. ALBRIGHT:** All right. I just wanted to make sure
14 I didn't need to leap to my feet and make a Daubert objection
15 at this point.

16 **THE COURT:** Well, I think that you have a -- I'll
17 give you, which I never do, a running -- everybody gets a
18 running Daubert objection. How about that? To everybody
19 else's experts.

20 **MR. ALBRIGHT:** I'm delighted with that. Thank you,
21 your Honor.

22 **THE COURT:** Okay.

23 **BY MR. YETTER:**

24 Q Let's move to that first main area, the caseload area, and
25 start with case workers and how important -- based on your

1 personal experience -- the Judge has heard a lot of testimony
2 about this, but I want to -- if you could, from your personal
3 experience, how important are the primary conservatorship type
4 case workers to the child welfare system?

5 A Well, that -- that primary case worker, that -- that's our
6 frontline resource. That's the face the child person. In a
7 child welfare system, they are absolutely essential -- you
8 know, when we take -- when we remove a child, we're essentially
9 saying to that family we can be a better parent. We have more
10 to offer. And it's that case worker that really makes that
11 difference in making certain that, in fact, if we remove a
12 child, we provide that child with something better than what we
13 remove that child from.

14 Q And we've heard a lot of testimony in the case that the
15 state has elicited that there's all sorts of case workers --
16 different kinds of case workers. And in the Texas system,
17 which is that essential case worker that you're talking about,
18 what's their name in the Texas system?

19 A It's a conservatorship worker. They call them
20 conservatorship workers.

21 Q And, again, focusing just on PMC workers, is it -- would
22 that be the primary conservatorship worker for the PMC child?

23 A Yes.

24 Q That -- we've also heard an acronym. There's lots of
25 acronyms in the case. But CVS case worker. And what would

1 that be?

2 A Conservatorship, I think.

3 Q Same thing?

4 A Yeah. I think so.

5 Q Now, how do these children come to the state -- these PMC
6 children. How -- when they get to that level, what's their, in
7 general, if you can generalize for us, what kind of situation
8 are they in?

9 A Well, these -- the PMC kids come in through the TMC
10 process. They enter the state as -- in temporary managing
11 conservatorship. And that typically lasts for 12 months in
12 Texas. Sometimes it can be extended up to 18 months. And then
13 those kids, as a result of a legal action, enter the permanent
14 managing conservatorship of the state of Texas.

15 Q Let me -- let me ask you a question that I've been
16 wondering about for a long time. Is there something that you
17 are familiar with in Tennessee or in Kentucky where you
18 designate a child as being a permanent part of the foster care
19 system?

20 A No.

21 Q Is there -- are you familiar with other child welfare
22 systems around the country that at some point with a foster
23 child, actually designate them, give them the label of being
24 permanent?

25 A No.

1 Q Is that the -- is it --

2 A No. Typically what the nomenclature is, is foster care is
3 temporary. And the goal always is to get that child into a
4 permanent home and out of the system so that is somewhat
5 unusual terminology.

6 Q So is -- are you familiar with any other system around the
7 country, like Texas, which has after a period of time, 12 or 18
8 months, changes the designation for that foster child from
9 being temporary to being permanent?

10 A No.

11 Q Now, you talked about the primary conservatorship case
12 workers being the -- I think you said essential or the bedrock.
13 What sort of responsibilities here in Texas do they have based
14 on your investigation?

15 A Well, that -- the -- that primary case worker has the
16 responsibility of developing and implementing that case service
17 plan and if the family is still the -- the birth family is
18 still involved, a birth family plan as well -- or parenting
19 plan, although those are not necessarily required for the PMC
20 children. But they also -- that case worker has that
21 responsibility. The basic work is safety, permanency, and
22 wellbeing. So that case worker has the responsibility for
23 seeing that -- ensuring that that child is placed in an
24 environment where we have at least a reasonable assurance that
25 that child is going to be free from harm. In terms of

1 wellbeing, we have a -- although I consider permanency a very
2 important part of wellbeing -- but because the nomenclature
3 typically breaks them out, I will -- educational issues for
4 children, medical issues, social issues. Seeing that those are
5 addressed so that that child -- the idea is, if we have to take
6 a kid into custody, we want to keep them as short a period of
7 time as possible. And during that period of time, we want for
8 them the same thing we want for our own children, and that is
9 that they stay on a path to a successful adulthood, that we not
10 disrupt that developmental process by what we do with children.
11 And those are sort about those wellbeing issues. And then I
12 think permanency is a singularly most important wellbeing issue
13 and that case worker -- and remember I said before, foster care
14 is temporary. We always say that -- that permanency begins
15 with a knock on the door. From the first day we make contact
16 with that child, our obligation is to be moving that child in
17 -- back into his own home or into a permanent alternative if he
18 cannot return to his family.

19 Q Dr. Miller, I'm going to ask you about a position that the
20 state has articulated at least to Judge Jack that they have --
21 the state has no duty other than to keep a child in its custody
22 -- a PMC child in its custody safe from physical harm.

23 MR. ALBRIGHT: Your Honor?

24 //

25 //

1 **BY MR. YETTER:**

2 Q I'm going to ask you about --

3 **THE COURT:** Excuse me.

4 **MR. ALBRIGHT:** I object to that. That's a
5 mischaracterization of our position and I think it's an
6 inappropriate question to be talking about our assertions of
7 the law with this witness.

8 **THE COURT:** Okay. What I understood and the -- the
9 propositions of the law that were not agreed to by the state --
10 and I asked -- questioned you on the phone about this in the
11 Final Pretrial Conference. I said do you believe that there is
12 a Constitutional right to be free from unreasonable risk of
13 harm? And you said no. The state's position is no. Right?

14 **MR. ALBRIGHT:** And I explained that.

15 **THE COURT:** Okay. But I mean, you said no. There is
16 no Constitutional right for that. It's a contested proposition
17 of law and that's -- that's what I understood you say. I know
18 that you wanted to say it wasn't open ended but you said it
19 wasn't there.

20 **MR. ALBRIGHT:** Well, your Honor, I'll read to you the
21 actual proposed conclusion of law. It very clearly says it's
22 an unfettered, undefined harm, open ended concept of harm.

23 **THE COURT:** Right. And you --

24 **MR. ALBRIGHT:** You know, our position is clear on
25 that.

1 **THE COURT:** And this -- okay. It is that you do not
2 agree -- I understand from the -- our conversations of the
3 Final Pretrial Conference that you stated clearly -- and I'll
4 play it back for you if you want her to bring it up -- that the
5 state does not agree that there is a Constitutional right to be
6 free from unreasonable risk of harm, period, right?

7 **MR. ALBRIGHT:** And I said on an unlimit -- unlimited.

8 **THE COURT:** Yes?

9 **MR. ALBRIGHT:** Yes. I said that.

10 **THE COURT:** Okay. So there we are. That's what
11 their position is.

12 **MR. ALBRIGHT:** And then my objection is, is it
13 appropriate to interrogate a witness with respect to a legal --

14 **THE COURT:** With legal conclusions.

15 **MR. YETTER:** I am -- I'm not asking her about legal
16 conclusions. I'm asking her as a child welfare professional in
17 this profession, what is the harm that they will -- that they
18 are trying to prevent that child from coming into contact with?

19 **THE COURT:** Okay. You can ask that.

20 **MR. YETTER:** Now --

21 **THE COURT:** That's not the objection.

22 **MR. ALBRIGHT:** Correct.

23 **THE COURT:** That wasn't what he was asking earlier.

24 **MR. ALBRIGHT:** No. It's a very different question
25 and it was a misstatement of our position.

1 **THE COURT:** I didn't think it was a misstatement of
2 the position, but it is --

3 **MR. ALBRIGHT:** Well, but Judge --

4 **THE COURT:** -- a question about a legal conclusion
5 and he can't do that.

6 **MR. ALBRIGHT:** Our position was a duty to -- to
7 personal security and a reasonably safe living conditions is
8 found in 5th Circuit law. What Mr. Yetter said was a
9 mischaracterization of our position on the duty.

10 **THE COURT:** Okay.

11 **MR. ALBRIGHT:** Thank you, your Honor.

12 **THE COURT:** I think that we're clear that the state
13 of Texas does not recognize a Constitutional right to be free
14 of unreasonable risk of harm because you consider that to be
15 open ended.

16 **MR. ALBRIGHT:** Exactly.

17 **THE COURT:** Okay. We're there.

18 **MR. ALBRIGHT:** And that the 5th Circuit has never
19 held that in this --

20 **THE COURT:** That may be but I think other Courts have
21 and I think there's a Supreme Court case on that.

22 **MR. ALBRIGHT:** I disagree with that on the Supreme
23 Court case, your Honor.

24 **THE COURT:** All right. I'm probably overstating it.

25 //

1 **BY MR. YETTER:**

2 Q Dr. Miller, as a longtime professional in the child
3 welfare system, as a professional that's worked in a child
4 welfare system that's in charge and has custody -- legal
5 custody of children in the system, I want to talk to you about
6 your view of harm to children. Does it include physical harm
7 to children?

8 A Yes.

9 Q Would it include --

10 **THE COURT:** And he's going to say does it include
11 mental and psychological harm to children?

12 **THE WITNESS:** Those are much more damaging long term
13 to --

14 **THE COURT:** Than a slap in the face?

15 **THE WITNESS:** Absolutely.

16 **THE COURT:** I think we all know that.

17 **THE WITNESS:** Physical -- a physical injury heals.
18 It heals by and large. If you traumatize children, what -- and
19 I almost said when they're very young, but the research has
20 changed dramatically on that, that there are just as many
21 potential dangers from trauma and a lack of stability and
22 continuity for those teenagers that people are now calling
23 emerging adults as in early childhood in terms of neuroscience
24 and brain development and those injuries can last a lifetime.
25 And often do.

1 **BY MR. YETTER:**

2 Q Based on your work around the country, are you familiar
3 with any other system in the country that doesn't believe that
4 there -- a child welfare system that doesn't believe that their
5 obligation is to keep their children in their custody free from
6 physical, emotional and psychological harm?

7 A No.

8 Q Now, permanency --

9 A And risk of harm.

10 Q And -- yes. And risk of that harm, true?

11 A Absolutely. If you don't believe that you have an
12 obligation to keep -- I'm probably talking too much, and I
13 apologize --

14 **THE COURT:** No.

15 A -- free from the risk of harm, why would you remove them
16 in the first place?

17 Q Now --

18 A They're already at risk of harm.

19 Q If your system is not calculated to move the child to a --
20 to permanency -- to a permanent alternative home or back with
21 their biological parents, would that subject them to a risk of
22 harm in your opinion as a child welfare professional?

23 A Here's the problem, okay? These kids are already fragile.
24 They have already been damaged before we ever get them. And we
25 know that that removal, no matter how carefully we do it, no

1 matter how sensitive we are, that initial removal does damage.
2 It does. It creates trauma and grief and loss for that child.
3 I don't care how bad the family is. That child loves that
4 family. That's -- that's their core. And when we have to
5 remove them, we're going to create damage. Now, the worst that
6 -- and I've often said, the worst thing we can do from a -- for
7 a -- to a child is remove them from their home. The second
8 worst thing is move them again. And if you've got to get --
9 we've got to provide stability and we've got to have -- and the
10 DFPS policy say this. I mean, they're very clear that children
11 need to move to permanency as quickly as possible and, you
12 know, those kinds of -- so at some level that is espoused. But
13 you don't want to keep kids -- states don't make good parents.
14 We just don't. We're a poor substitute. And we need to get
15 those -- if we absolutely have to bring the child into the
16 system, then we do the work that needs to be done and get that
17 child either back with their -- as quickly as possible, in as
18 short a period of time as possible, because time is very
19 different from children than it is for us. We measure time by
20 our age. At my age, you know, a month is nothing. It's
21 absolutely nothing, as a percentage of my age. For children, a
22 month may be a pretty significant period of time in
23 relationship to their age.

24 Q All right. So in the Texas system, who is that one worker
25 that has the biggest responsibility in your opinion to help

1 that child, that PMC child, achieve safety, permanency, and
2 wellbeing?

3 A That's the primary case worker.

4 Q High caseloads, are they good or bad for primary case
5 workers to do their job?

6 A They are bad. They -- if that caseload is too high, that
7 worker -- I don't care how good they are, how committed they
8 are, how caring they are, this work is hard. It's complex.
9 And they simply cannot get the work done if they have an
10 unmanageable caseload.

11 Q Have you focused on that specific issue looking in all the
12 documents that Texas has provided us, looking in all the
13 information that you've had available, the depositions and the
14 testimony, have you focused on that issue of high caseloads in
15 Texas?

16 A Yes.

17 Q And based on the documents you've seen internally, within
18 Texas, do they acknowledge that they need to have much lower
19 caseloads or do they deny it internally?

20 A No. Internally, the documents are pretty clear. In their
21 budget documents and in the reports that they do, they
22 recognize that workforce issues are one of the issues that are
23 facing the agency and that it's something that needs to be
24 addressed.

25 Q So, with all that internal information that Texas has

1 about acknowledging that they have high caseloads and it's been
2 damaging, how have you seen the information that you've gotten
3 in the Court, the depositions where some of the top
4 executives --

5 **THE COURT:** Hold up.

6 **MR. ALBRIGHT:** I was going to let him hang a question
7 mark at the end of the statement and object on the basis that
8 it's leading.

9 **THE COURT:** Sustained.

10 **MR. ALBRIGHT:** Thank you, your Honor.

11 **BY MR. YETTER:**

12 Q How have you -- have you been -- have you read the
13 testimony of the various Texas officials that seem to suggest
14 that they don't have a problem with high caseloads?

15 **MR. ALBRIGHT:** Same objection, your Honor.

16 Q Have you read that testimony?

17 **THE COURT:** Hold up.

18 **MR. ALBRIGHT:** And seem to suggest?

19 **THE COURT:** Sustained.

20 Q I'll ask -- I'll say it -- have you heard testimony from
21 the high -- the top executives in this case of Texas about
22 whether they say they have high caseloads or not?

23 A Yes, I have. And -- and yes -- and no, they don't -- they
24 say that often times, no, our caseloads are okay. We can do
25 it. People just do more. They move in to help. You know, if

1 -- if the caseloads get too high -- that's not as troubling to
2 me. It's that nobody knows. I mean, they don't know what
3 their caseloads are. Nobody seems to be -- it -- you know,
4 it's like it's a reactive model instead of a proactive model.
5 You know, I remember in Ms. McCall's testimony that it's wait
6 until somebody gets in trouble and then how do we help them
7 rather than figuring out a system -- and that is so
8 demoralizing, I think. In my professional opinion, I think
9 that's demoralizing to case managers that we don't recognize
10 that this -- there is a volume of work here and it's
11 significant and it's important. And it's difficult and it's
12 complex. If we don't recognize that and define it in some way
13 in terms of what is a manageable caseload, and that -- I don't
14 see that anywhere.

15 Q All right. Let's -- let's -- we will get to that shortly.
16 Let's focus a little bit more and before we move to that topic
17 of the affects that you've seen in your career of high
18 caseloads. How does -- how do high caseloads affect the
19 ability of the case workers to do quality work for their
20 children?

21 A It's not just a matter of doing quality work. It's a
22 matter of doing the work and then quality comes on top of that.
23 But they have responsibilities -- this whole idea of the way
24 you get the child out of the system quickly is that you do good
25 thorough case planning and case implementation and you track

1 that that work is, in fact, being done and that the child is
2 making progress. So, when you see that some of those things
3 are not happening, that certainly is an indicator that there
4 are high caseloads. Placement stability -- and I -- let me
5 take just one -- one second and put -- when I -- as I looked at
6 the caseload, workload issue and the placement issue, those two
7 pieces of the infrastructure are not mutually exclusive. They
8 feed into each other and create a synergy. So, one of the
9 things that -- that you want that primary case worker to do is
10 to make the very best choice, placement choice that she can
11 make to that child. Because remember I said, the worst thing
12 we do is remove them. Second worst thing is remove them again,
13 is move them again. And the only way she can do that is if she
14 has the time and the resources to understand and make that best
15 match for that child so that if at all possible you prevent
16 that -- an additional move for those kids. And you see a real
17 lack -- these -- the -- particularly for these PMC kids. They
18 just are moved all the time and I -- it makes sense to me from
19 my professional experience that if case workers did have the
20 time and the resources to make those decisions in a way that
21 was more appropriate for children, then they would be making
22 those decisions in ways. You also see when you have -- and
23 when your caseloads are too high, these incredible lengths of
24 stay. Well, length of stay is directly related to exits to
25 permanency. The longer the kid stays in care, the longer he's

1 -- he or she is denied that permanent environment that they so
2 definite -- desperately need if they're going to get on that
3 path to a successful adulthood.

4 Q Okay. I want to see if we can kind of take this in little
5 bit chunks so that we can kind of keep it a little bit
6 organized -- a little bit more organized for the Court. So, I
7 don't -- you said -- I think the first thing you said was the
8 high caseloads not only make it difficult to do quality case
9 work but to do the case work at all?

10 A That's correct.

11 Q Now, in your professional opinion based on the systems
12 you've run and the information that you've looked at in Texas,
13 how would that -- if at all, how would that harm the PMC
14 children that that case worker -- that overloaded case worker
15 -- is to protect?

16 A Okay. Children need stability in their lives. If that --
17 and they need the services that are critical to their
18 wellbeing. That's a part of that planning and implementation
19 process. The goal of which always is permanency, is exiting
20 the child from the system. But doing that in a way that while
21 we have that child we're doing the very best job we can to
22 attend to the needs of that child and see that the child is
23 well taken care of.

24 Q Are your opinions, in that respect, consistent or
25 inconsistent with what the state has been saying in its

1 internal documents in recent years, about the effect of high
2 caseloads?

3 A Yes. I mean, they acknowledge that and that -- that high
4 caseloads can delay permanency, increase length of stay, and
5 prevent children from exiting the system.

6 Q I'm not going to go through all the documents, but let's
7 just look at a couple. Plaintiffs' Exhibit 894 which should be
8 on your screen. The -- can you just go up to the top?

9 A Wait a second. Is there any way I can make this larger?

10 Q Yes. We're going to go up to the top and you will be
11 able --

12 A Oh, wonderful.

13 Q It will be able to -- easier to read. This is one of the
14 documents that was in your file. Do you recognize it as a
15 document from the state?

16 A Yes.

17 Q Okay. Now I want -- this is dated February 27, 2013,
18 Texas DFPS. It's a description of a revised exceptional item
19 request. This is going to the legislature. Let's look at the
20 third bullet on the page. And I want you to tell us if that is
21 consistent. Let's just read it -- consistent with your opinion
22 or inconsistent. "High conservatorship caseloads mean it can
23 be more difficult for case workers to do the work necessary to
24 ensure timely permanency for children in foster care." Do you
25 agree with that or not?

1 A Absolutely.

2 Q "The result is that children may spend more time in foster
3 care which is not optimal for the child and is more expensive
4 for the state." Do you agree with that or not?

5 A Absolutely.

6 Q Do you think that creates an unreasonable risk of -- risk
7 of harm to the child, high caseloads?

8 A I think -- yes, but I think it actually can and often does
9 create real harm --

10 Q An actual harm?

11 A -- to children. An actual harm.

12 Q All right. The last sentence -- this relates to being
13 more expensive to the state, "Every additional month a child
14 spends in foster care costs an average of" -- this is according
15 to the state of Texas, eighteen hundred and ninety-eight
16 dollars just for the child's care. Now, do you have an opinion
17 about that statement?

18 A Well, yes. And I -- several years ago in Tennessee, we
19 had someone do an -- we were working very hard on permanency
20 and to reduce the length of stay for our kids. And we had
21 somebody do a study for us and what he looked at, and his
22 conclusion was if we reduced the length of stay for every child
23 in custody in a year -- every child that was in custody or came
24 (indiscernible) -- if we reduced that length of stay by just
25 one month, we would save thirteen million dollars, one month.

1 Q Now, do you -- do you think that if the state of Texas
2 reduced its high caseloads that -- and were able to move
3 children to permanency quicker that they would save money?

4 A Without question.

5 Q Now, have you seen information -- again, on this high
6 caseload issue, from the Steven Group with regard to how much
7 time these conservatorship workers are able to spend with
8 children and families as opposed to doing paperwork?

9 A The Stevens -- Steven Group stated that the case workers
10 were spending approximately 26 percent of their time -- only 26
11 percent of their time with children and families and the rest
12 of their time was being spent on administrative tasks, data
13 entry, and travel.

14 Q Let's go to Plaintiffs' Exhibit 1993 which is the Steven
15 Group. You read that report and you said it was a lengthy
16 detailed report?

17 A Yes, I did.

18 Q Let's go to page ten, April, 2014 and the bottom title and
19 paragraph. Is this the part of the Steven Group that you were
20 just referring to?

21 A Yes.

22 Q "Field staff only spends 26 percent of time with children
23 and family. Families currently CPS field staff only spends a
24 quarter of its time directly with children and families." Now,
25 was that a -- when you saw that that -- when you saw that

1 finding, what was your -- did you react to it? Did you have a
2 reaction to that?

3 A That's -- I thought that was extremely low. A very small
4 percentage.

5 **THE COURT:** Say that again?

6 **THE WITNESS:** I thought that was a very small
7 percentage. I was, like the Stevens Group folks --

8 **THE COURT:** Okay.

9 **THE WITNESS:** -- surprised.

10 **BY MR. YETTER:**

11 Q Was that -- is that a negative or positive surprise?

12 A That's a negative.

13 Q I think you said extremely low. Can you compare that with
14 the systems that you're -- that you're familiar with? Do you
15 have some basic idea?

16 A I -- I would have to estimate and but I think a goal would
17 be that you manage a worker's time so that at least 40 to 50
18 percent of their time is actually in direct work with children
19 and families. Now, there's no question about it. There's a
20 great deal of work that in addition to the direct work with
21 children and families that are a part of that case manager's
22 workload in any given period of time. But you would want to
23 try to keep that to a level where at least 40 to 50 percent of
24 their time was spent with children and families.

25 Q Now, if case workers -- if the primary conservatorship

1 case workers in the state of Texas are only spending about 26
2 percent of their time with children and their families, do you
3 think those children would be at a risk of the sort of harms
4 that you've been describing to the Court?

5 A Depends on what the caseload is.

6 **MR. ALBRIGHT:** Your Honor, I object to that question.
7 He just said 26 percent of conservatorship case worker time,
8 and that's not what the document says.

9 **MR. YETTER:** Let me rephrase.

10 **MR. ALBRIGHT:** It's a leading question and it's
11 misleading.

12 **BY MR. YETTER:**

13 Q If the field staff in the Child Protective Services unit
14 of the DFPS spends only a quarter of its time directly with
15 children and families, do you think that would put the children
16 at a risk of harm if they have high caseloads?

17 A Yes.

18 Q And tell us why. And I should say -- let me amend my
19 question -- at an unreasonable risk of harm?

20 A Well, if you've -- if you've got 26 kids or more, which a
21 relatively large number of the case workers in Texas do have,
22 26 percent of your time is all that you have to devote to that
23 many different children, you know, I can say unequivocally that
24 that is simply impossible. That work, it will not happen. In
25 essence, those children may well not have a case worker.

1 Q Do you believe that a PMC child in the state of Texas that
2 effectively has no primary conservatorship case worker is a
3 safe child?

4 A No.

5 Q Is that child, in your opinion, subject to an unreasonable
6 risk of harm?

7 A Yes.

8 Q Or suffering actual harm?

9 A I think probably both of the above.

10 Q Now, you've talked about the other systems and how you
11 deal -- how you make sure that the -- your case workers that
12 was essential core workers for these children have manageable
13 caseloads. And you -- you've talked a little bit about their
14 workload, have you not?

15 A Right. Right.

16 Q Do you know what caseload standards are?

17 A Yes.

18 Q And can you tell us in the field of child welfare, the
19 professional child welfare, what's the caseload standard?

20 A Well, there are two different groups that establish the
21 standards. One is a professional organization and the other
22 one is an accrediting organization. CWLA is simply a
23 professional organization that has developed standards using
24 experts who do this work all the time to come together to
25 develop what they think is reasonable work. And they have said

1 -- they have suggested these are not --

2 Q Before we get -- before we get into the details, I just
3 want you to explain what the concept is, caseload standards.

4 A Oh, I'm sorry. I didn't -- establishing, just like you
5 would in -- with any other professional body of work,
6 establishing standards around what is a reasonable amount of
7 that work that one person could do, and do well.

8 Q Now, is the concept -- based on your investigation, is the
9 concept of caseload standards for child welfare professionals
10 completely new to Texas? Or does Texas recognize --

11 A No. They -- they -- their statutes recognize the CWLA
12 professional standards.

13 Q Let's go to Plaintiffs' Exhibit 96. And let's go first to
14 the -- the definition of caseload standards. Now, all right.
15 So, do caseload standards, are they averages or are they
16 minimums and maximums or what are they?

17 A The standards usually are establishing either a range as
18 with CWLA or a maximum.

19 Q Okay. Now, why is the maximum important for child welfare
20 professionals like conservatorship case workers?

21 A What that does is establish a cap or a ceiling beyond
22 which you don't want to go and -- or you can't go and assume
23 that that worker is able to do the work that needs to be done
24 within the parameters of whatever their job is, what that --
25 how that job has been defined.

1 Q For a caseload maximum in the child welfare profession,
2 who is -- in your experience, who -- who's protected or
3 benefited by the maximum?

4 A The children.

5 Q And how does that protect them?

6 A Because it provides them with a case worker who has the
7 time available to do the work that needs to be done in safety,
8 permanency, and wellbeing for those children.

9 Q All right. So this -- the Texas statute which is
10 Plaintiffs' Exhibit 96 says caseload standards means the
11 minimum and maximum number of cases that an employee can
12 reasonably be expected to perform in a normal work month based
13 on the number of cases handled by or the number of different
14 job functions performed by the employee? Do you see that?

15 A Yes.

16 Q Is that a standard or an unusual sort of definition of
17 caseload standard?

18 A No. It looks pretty basic.

19 Q Something that in the child welfare profession that --
20 that you think is reasonable?

21 A Right.

22 Q Now, who sets why they're called professional caseload
23 standards, in your experience?

24 A The organizations, Child Welfare League of America, and
25 Counsel on Accreditation.

1 Q Is that, again, something unusual or new to Texas?

2 A No.

3 Q Let's go down to professional caseload standards which is
4 definition five. And in this state, if the Commissioner
5 decides to set standards, what is one of the organizations that
6 he is to -- he is told by state law to look to?

7 A Child Welfare League of America.

8 Q Now, is that Child Welfare League of America among child
9 welfare professionals around this country, is it an outlier
10 group?

11 A No.

12 Q How is it -- how well accepted or not is it in the -- in
13 this -- in the country?

14 A Well, it has a large number of members and states can be
15 members and agencies and organizations and I think currently --
16 well, actually 2010 are the last figures that I -- or list that
17 I saw. But there were 38 states who were members who
18 recognized CWLA and were members of that organization.

19 Q And do you know whether or not Texas is -- recognizes the
20 Child Welfare League of America?

21 A They were members in 2010.

22 Q Now, do you know whether in the state of Texas if the
23 Commissioner or the DFPS says that our case workers should have
24 caseload standards whether he is, under our law, required to
25 look to standards like the Child Welfare League of America?

1 A This says that they are recommended for establishment so I
2 would assume that that would be something he would look to
3 since it's in statute.

4 Q The -- we heard -- did you hear testimony on Monday from
5 Ms. McCall that it would be a waste of Texas resources to put a
6 maximum caseload -- to put -- a caseload standards that have a
7 maximum on conservatorship workers? Did you hear that?

8 A Yes.

9 Q And what was -- do you have an opinion about whether what
10 she says is consistent with child welfare standards around the
11 country?

12 A Here's the thing that I think is so important about this
13 -- this whole issue. If you have a work force that has
14 manageable workloads, you're not burning up resources on
15 overtime -- or in massive amounts of overtime. You're not
16 burning up resources on massive amounts of turnover. And you
17 have the human resources -- those case workers necessary to get
18 your kids exiting from the state custody -- out of custody,
19 reducing that length of stay, then you will save money, I
20 promise you. That's one of those things you can take to the
21 bank that would not cost you money. It would save you money.
22 And lots of money. Not little bits of money. A great deal of
23 money.

24 Q You were about to get to, before I interrupted you, some
25 of the professional standards that, for example, the Child

1 Welfare League of America has set for conservatorship type case
2 workers.

3 A They say eight to 12.

4 Q And -- and are there other --

5 A Or have, yeah, in the past. That --

6 Q And today, do you know if there are other organizations
7 besides the Child Welfare League of America?

8 A Yes. Counsel on Accreditation.

9 Q And do they also have professional caseload standards that
10 they recommend, a range or a number?

11 A Yes. And they've -- they've recently dropped theirs.
12 When the two states that I worked in were going through the
13 accreditation process -- I don't think I mentioned that before
14 -- but both Kentucky and Tennessee, we did take two national
15 accreditation -- and at that time when we were going through
16 their standards, were 12 to 18 or eight to 18. I can't
17 remember exactly. Anyway, the ceiling was 18 and then they had
18 a range, that they recommended as the standard. And I can tell
19 you from going through that experience in both states, what
20 they really measured to was 17. When they were in both my
21 states, that's what they were looking for, were caseloads that
22 were around that 17 number.

23 Q When you were in Kentucky and in Tennessee, what was the
24 caseload range that you were -- that you installed within your
25 system?

1 A The caseload range that I used was 14 to 17.

2 Q Now, 14 -- you've heard -- we've heard testimony in this
3 case about what -- how they define caseloads here in Texas.

4 Have you heard about stages?

5 A Yes.

6 Q Did you do that in Kentucky or Tennessee?

7 A No, I didn't.

8 Q What did you count?

9 A I counted children.

10 Q And is that, in your experience at least around the
11 country, is counting children caseloads a -- an unusual or the
12 rule in terms of professional child welfare?

13 A It's pretty standard operating procedure.

14 Q And these numbers that you've given us --

15 A I mean, you -- you well -- you may well measure other
16 things but I don't know of any other system that doesn't
17 measure the number of children in a caseload. I don't know of
18 one. It may exist. I don't know.

19 Q And the numbers that you were just giving us between eight
20 and 17, is that children or is that some other sort of
21 caseload?

22 A The number I gave you was 14 to 17.

23 Q Fourteen to 17.

24 A That -- that's children.

25 Q And that's children?

1 A Yes.

2 Q Now, when you were -- and was that -- what did you
3 consider that range to be? Was it the maximum minimum? Was it
4 the optimum? What -- how did you look at that?

5 A My cap was 20. I wanted people to stay as much as
6 possible -- you know, this -- this is a fluid thing. Kids are
7 coming in. Kids are exiting the system, being assigned. So, I
8 wanted a reasonable range where I thought that high quality
9 work could be done. But I also wanted an absolute maximum that
10 trigger red flags, when we thought okay, we've got to figure
11 out what's going here. You know, these -- if you don't manage
12 caseloads, they can get out of control on you very quickly and
13 then the work really begins to suffer and the children for whom
14 that work is being done begin to suffer. So, I not only used a
15 range. I also used a cap.

16 Q So, did -- did you or not -- how did you view that range
17 of 14 to 17 in terms of child caseload as to whether it was
18 good practice, best practice, reasonable -- how would you
19 characterize it?

20 A I thought it provided a reasonable workload where I was in
21 a position to be able to hold those workers accountable for
22 doing the work -- the quality work that needed to be done for
23 our children. I didn't feel like -- well, I know for a fact
24 they were not fat cats. They were still very busy. They had
25 plenty of work to do in the course of their day. That's the

1 other thing about managing caseloads. I don't know how you
2 hold your case managers accountable for this extremely critical
3 work that they're doing unless you have and they have some sort
4 of assurance that what it is you're asking them to do is -- is
5 somehow manageable.

6 Q So we're going to get to workload studies in just a bit.
7 And I want to continue to focus on some of the caseloads you
8 talked about. Did you believe or do you believe that a
9 caseload maximum -- the ceiling that you talked about at 20
10 where you said it raised red flags in Tennessee, I think you
11 said. Do you think that that's a best practice sort of ceiling
12 or a desirable ceiling?

13 A Well, obviously, I think it's a most desirable ceiling
14 because it's the one I used. But I came to that in a
15 relatively pragmatic sort of way. I spent a -- when I first
16 went to Tennessee, we had caseloads far in excess of that and
17 our kids were staying far too long in custody and they were
18 being moved too much. And we weren't doing the kind of
19 permanency planning that needed to be done. And as I began --
20 and I spent a great deal of time tracking child progress in
21 relationship to -- you know, how is the child moving through
22 the program in the way they should? And it became -- and in
23 that work, I also looked at the workers' caseloads. And it
24 just became very obvious to me if I could keep those caseloads
25 below 20, that I could expect that -- to see that child making

1 the kind of progress that I wanted the child to make. And if
2 those caseloads shot above 20 then I wasn't going to see that
3 kind of progress. I was going to see kids backing up in the
4 system. Now, here's another reason why I did the 14 to 17.
5 And, again, it's sort of a pragmatic reason. We had five
6 workers per supervisor. If I -- if I was at 14 to 17 and I had
7 one of those workers leave the system, resign, then I had no
8 problem taking that case load and spreading it among the
9 remaining workers so that none of those kids fell through the
10 cracks. And those left workers still didn't go over the 20.
11 Do you see what I'm saying? So, that was one of the reasons
12 that I thought it was very important to manage caseloads to
13 that level so that if we had a crisis or if we had somebody
14 leave and, you know, there are crisis situations. You have a
15 meth lab bust and you suddenly can get in a huge number of
16 children. People who do drugs seem to have a lot of kids. And
17 when that happened, we were able to distribute those kids
18 quickly, be responsive to that crisis without throwing our
19 workers into a range where they couldn't get the work done that
20 needed to be done for their kids.

21 Q Dr. Miller, if 20 -- when you were in Tennessee, if 20
22 raised red flags that your conservatorship case workers could
23 not do the work that the children needed, what is your view
24 about a ceiling of 25?

25 MR. ALBRIGHT: Objection.

1 A I think that is bedrock.

2 MR. ALBRIGHT: Excuse me, your Honor?

3 A I think that's --

4 MR. ALBRIGHT: Can I object for just a moment?

5 THE COURT: Excuse me.

6 MR. ALBRIGHT: I object to the form of the question,
7 what is your --

8 THE COURT: Just hold on. When he stands up to
9 object, don't answer.

10 THE WITNESS: I'm sorry.

11 THE COURT: That's all right. You're not a lawyer,
12 but your lawyer should have told you.

13 MR. ALBRIGHT: And so I object to two things about
14 the question. One is what is your feeling about so I object to
15 the form of the question on that unless we want to get a
16 feeling. But the second objection is it's unclear; is he
17 asking about 25 in Tennessee or in Texas?

18 MR. YETTER: I'll rephrase, your Honor.

19 BY MR. YETTER:

20 Q Dr. Miller, if you believed, as you've explained to us,
21 that 20 -- a child caseload of 20 raises red flags about
22 whether that case worker can do the work that the child needs
23 to protect the child, what is your opinion about a child
24 caseload of 25?

25 MR. ALBRIGHT: Well, your Honor, again, the same

1 objection. If we're trying to get an opinion about Texas, I
2 have an enormous objection because this has never been in her
3 expert report. It's a last minute change because they realized
4 it was a failing position to go with the prior one. She has
5 never provided a report that says one word, any quantification,
6 any analysis of the number 25 in the state of Texas and I most
7 vehemently object to this line of testimony.

8 **THE COURT:** Do you have that in your expert report
9 some place?

10 **MR. YETTER:** Your Honor, I believe she talks about
11 these numbers in her expert report, and I can ask her right
12 now.

13 **THE COURT:** Well, why don't you go through your
14 report and see where you discuss that, okay? And that's on
15 Plaintiffs' Exhibit 2037. Do you have it in front of you?

16 **THE WITNESS:** Yes, I do. But I don't think I have
17 the number 25.

18 **MR. ALBRIGHT:** That's my point, your Honor.

19 **BY MR. YETTER:**

20 Q Do you have opinions about reasonable caseloads?

21 A Yes.

22 Q And what are your opinions about reasonable caseloads for
23 the state of Texas?

24 A I think that 25 number --

25 **MR. ALBRIGHT:** Your Honor? Now, I'm going to object

1 to that because she never expressed in her expert report an
2 opinion as to what --

3 **THE COURT:** Forget about the 25. Just tell me what
4 you think is appropriate. That's in your expert report because
5 I think you -- I think she testified about it before.

6 **MR. ALBRIGHT:** Your Honor, she never testified to a
7 number.

8 **THE COURT:** No, she didn't.

9 **MR. ALBRIGHT:** And she didn't do it the first time
10 around. She didn't do it this time around. And they
11 (indiscernible).

12 **MR. YETTER:** Yeah, yeah --

13 **THE COURT:** Is it anywhere -- just show me where it
14 is in the report and where she discussed about it.

15 **MR. YETTER:** Actually, I gave you my copy of the
16 report, your Honor.

17 **THE COURT:** Here.

18 **BY MR. YETTER:**

19 Q Rather than hold things up here. I'm going to let you
20 move on and then we can come back to this topic. Dr. Miller,
21 do you believe that client -- did you read Ms. McCall's
22 deposition testimony where she -- about -- her testimony about
23 client safety -- child safety?

24 A Yes.

25 Q And its relationship to lower caseloads?

1 A Yes.

2 Q And do -- what did she say and do you agree with it or
3 disagree with it?

4 A She did say that lower caseloads were better for kids and
5 safer for kids.

6 Q Do you agree with that?

7 A Yes.

8 Q Do you believe -- how does -- do you believe -- what -- is
9 there -- in your opinion, is there any causal connection
10 between high caseloads and risk of harm to children?

11 A Absolutely.

12 Q And likewise, same question, do you believe that there's
13 any causal connection between lower caseloads within the ranges
14 that you believe to be within professional standards and -- and
15 better outcomes for children?

16 A Yes.

17 Q And what is that connection?

18 A Can I -- can I give -- when we were able to get caseloads
19 down, and it took a while, we were able to reduce the number of
20 kids in the custody of the state from about 8,000 or over 8,000
21 to about fifty-five hundred kids. And we did that largely --
22 we -- we slightly reduced the number of kids actually coming
23 into the system but the big change was in getting the kids out
24 of the system more quickly by managing the backend of the
25 system. And in order to do that, you have to have case workers

1 who have reasonable manageable caseloads and then you have to
2 hold them accountable for doing that very important work of
3 getting children to permanency.

4 Q Have you seen the testimony of -- or did you hear of the
5 testimony of Ms. McCall during the trial that Texas has not
6 established any caseload size parameters?

7 A That's correct.

8 Q Did you hear the testimony of Ms. Black yesterday?

9 A Yes.

10 Q And she is the head of Child Protective Services in the
11 state of Texas?

12 A Yes.

13 Q Did you hear whether -- what she said about whether -- who
14 she had talked to within the state about putting --
15 implementing caseload standards? Who, if anyone, she talked
16 to?

17 A I don't remember her saying that she'd talked to anyone.

18 Q Did she have any discussions to your knowledge with anyone
19 in the state, any of her colleagues or the Commissioner about
20 putting any sort of minimums and maximums on the caseload --
21 the child caseloads?

22 A If I remember correctly, she said that she had not.

23 Q Did you hear any testimony from the state of Texas about
24 whether they keep track of or have standards for what caseloads
25 should be?

1 A No. They -- well, the -- no. There was an -- again, the
2 explanation was around crisis management. You know, it was the
3 squeaky wheel gets the oil. If somebody gets over -- and I
4 think -- I think Ms. McCall even said, not in her testimony,
5 but in a deposition that if they get to 50 -- the caseloads get
6 to 50, then she expects other people to come in and help them
7 to make sure things get done. So, no.

8 Q Did you hear testimony from Ms. Black about maybe doing a
9 workload study?

10 A Yes.

11 Q And did you hear any commitment from her on behalf of the
12 state to actually establish any caseload standards under Texas
13 law?

14 A No. All I heard her say was that there was a plan to do a
15 workload study.

16 Q Now, if you have your -- let's go to your report which is
17 Plaintiffs' Exhibit 2037. And if you have it handy -- I think
18 -- do you have it -- well, let's go --

19 A Yes. I have it but --

20 Q Let's go to --

21 A Go ahead. My pages -- numbers are going to be different
22 from yours because I had to have mine done in large print so
23 you may want to just bring it up here.

24 Q Okay. Let's go to page 18. Is this your report, that
25 first page that you saw?

1 A Yes.

2 MR. YETTER: Let's go to page 18. Let's blow up that
3 last paragraph.

4 Q Now, Dr. Miller, you've just been testifying about the
5 maximum that you used in Tennessee and what was that maximum?

6 A Twenty.

7 Q And what did that represent to you at the time, that
8 maximum?

9 A Twenty children. That was the cap.

10 Q And at 20 --

11 A That was the ceiling.

12 Q -- what did you believe was the issue or the concern?

13 A That the work would diminish past that point.

14 Q And, again, the next sentence talks about the caseload
15 range and what range did you use in Tennessee?

16 A Fourteen to 17.

17 Q What did you do whenever a caseload reached 20?

18 A I wanted to know why. I would check in to see -- and as I
19 said in the report, sometimes the explanation was reasonable
20 and this was going to be a very short term issue. And because
21 of some things that were going on with the kids, some of the
22 kids were about to exit to adoption or some of the kids on that
23 caseload were actually on a trial home visit that was almost
24 over. But if -- you know, if there -- if there was not an
25 explanation, then we had to find a solution. Then we -- you

1 know, this kind of information is so helpful to you to not just
2 diminish caseloads but to let you know where you need to add
3 resources. Like if I see an area where they're constantly
4 bumping up against that 20, then that says to me they're under
5 resourced. I've got to get some more case workers in there.

6 Q In Tennessee when they -- when a case worker's load got to
7 20 children and they were potentially going to get a new child,
8 what would you do?

9 A Okay. I didn't control at that. What I did -- what I
10 received every month was a spreadsheet that had every case
11 worker and every supervisor and their loads on that, and it was
12 broken out by the type of child, the type of issue that -- or
13 the type of case -- I'm sorry -- that they were working. And I
14 could scan that very quickly because most of our caseloads were
15 under control and I could scan that very quickly to look and
16 see what -- if I had any hotspots. And if I did -- if I saw
17 anything at that 20 level, then I would get in contact with the
18 regional administrator and say what's going on here? What's
19 your plan? What do we need to do? Have you had a crisis? Do
20 we need to get some more resources in up there? So that's sort
21 of how that process worked.

22 Q And that cap of 20, did you believe that that was a best
23 practice in the child welfare profession?

24 A It was the -- it was the practice that worked. So, is
25 that -- yes. Is that best practice? Hopefully.

1 Q In your experience?

2 A Yes.

3 Q Now, do you -- have you seen information on the
4 distribution in the state of Texas about children and how many
5 cases -- how many children -- what the caseloads are of the
6 case workers that each of these children have?

7 A Yes.

8 Q And has it been -- was it broken down into different
9 pieces, children between -- with case workers between one and
10 15 caseload and higher up?

11 A I -- I -- I can't remember exactly what that spreadsheet
12 did, in fact, look like. Do you -- if you have it there, you
13 could put it up. I can't -- I saw so many different
14 spreadsheets with iterations of workloads, I'm not sure I know
15 exactly which one it is you're referencing. It was extremely
16 difficult to get child only caseloads.

17 Q Let's start with page 11 of your report at the bottom.
18 The second sentence --

19 A Could you please give me some words because my page
20 numbers are not exactly -- oh, you've got it up here.

21 Q Sure. It's up on the screen.

22 A Thank you.

23 Q The second sentence.

24 **MR. YETTER:** Let's just highlight that.

25 Q "More than 250 case workers or 21 percent of all the case

1 -- conservatorship case workers had 26 or more children
2 assigned to them." Do you see that?

3 A Yes, I do.

4 Q Is that consistent with your memory of the information
5 that you saw?

6 A Yes. Yes.

7 Q Now let's go to Plaintiffs' Exhibit 2051. And to page
8 111. Does this chart look familiar to you?

9 A Yes.

10 Q PMC children by assigned child caseloads of their primary
11 substitute care and adoption case workers at the end of these
12 fiscal years. Do you see that?

13 A Yes.

14 Q And for fiscal year 2013, do you see those numbers?

15 A Yes.

16 Q So for the range one to 15 children, and would you
17 consider that to be a range of one child to 15 within best
18 professional practices?

19 A Yes. And the -- those are probably -- they're in training
20 workers.

21 Q And what -- looking at fiscal year 2013 for the state of
22 Texas, how -- what percentage of the PMC children were within
23 that caseload?

24 A Twenty-two percent.

25 Q And going then from 16 to 25?

1 A Twenty percent.

2 Q Well, 16 all the way up to 25?

3 A Twenty percent.

4 Q Twenty percent. That's 16 to 20.

5 A Right.

6 Q And then 21 to 25 was how much?

7 A Twenty-seven percent.

8 Q And then everything over 25, that would be 26 to 30, 31 to
9 35, and over 36. What was the total of those children?

10 A It's 31 percent.

11 Q So --

12 A And that's actually about 4,000 children if I remember
13 correctly.

14 Q Just to kind of put frame -- put this -- frame this, those
15 4,000 children -- PMC children -- have case workers that have
16 child caseloads of 26 children or above?

17 A That's correct.

18 Q That's the state of Texas?

19 A Right.

20 Q And those are -- are those PMC children or all children?

21 A These are PMC children.

22 Q How many children was that again?

23 A It's 4,000 children and it's 228 workers if I remember
24 correctly.

25 Q Now, in Tennessee after you did -- after you did -- you

1 said you did accreditation, you did reform in the state, did
2 you have children, at least to your knowledge, within your
3 policies and procedures, that had case workers with child
4 caseloads at 25 or above?

5 A Oh, no.

6 Q And why not?

7 A Because that's -- you can't do the work at 25 and above.

8 Q Would a child in Tennessee, in your opinion, have been at
9 risk of harm if they had a primary conservatorship case worker
10 with a child caseload of more than 25?

11 A Yes.

12 Q Your red flag mark, ceiling, was what?

13 A Twenty.

14 Q And at 25, would you have any doubt that they'd been at
15 risk of harm?

16 A No doubt.

17 **MR. ALBRIGHT:** Your Honor, again, is this limited to
18 Tennessee or are we back into Texas again? It's not in her
19 report.

20 **THE COURT:** I thought he was talking about Tennessee.

21 **MR. YETTER:** I was asking about Tennessee.

22 **MR. ALBRIGHT:** Okay. The question wasn't clear.

23 **BY MR. YETTER:**

24 Q Now, if you had your -- if you could make Texas do best
25 practices in its child welfare system, what range would you

1 have Texas adopt using best practice?

2 **MR. ALBRIGHT:** Your Honor, I object to that. Excuse
3 me. I object to that on the basis --

4 **THE COURT:** For the same reason?

5 **MR. ALBRIGHT:** Yeah, well --

6 **MR. YETTER:** She's testified about this and it's in
7 her report, your Honor.

8 **THE COURT:** Okay.

9 **MR. ALBRIGHT:** Okay.

10 **THE COURT:** You want to -- you want us -- for him to
11 show you?

12 **MR. ALBRIGHT:** Well, I --

13 **THE COURT:** I haven't read it because I've just now
14 seen it.

15 **MR. ALBRIGHT:** I'll tell you what I'm worried about.
16 I'm worried she's going to pop out with the 25 again and then
17 I've lost my objection that it's not in the report if she's
18 going to say that it's 15 to 18 based on CWLA or COA that's in
19 her report and have at it.

20 **MR. YETTER:** Your Honor, our position is -- is this.
21 That if this was the case about best practices, we would have a
22 range of 14 to 17. If this was a case about a best practice
23 ceiling, at least this witness would say that ceiling of best
24 practices would be 20.

25 **MR. ALBRIGHT:** And --

1 **MR. YETTER:** But our position in this case is that at
2 25 you're beyond best practices. You're at the point that
3 you --

4 **THE COURT:** Well, she just said that.

5 **MR. YETTER:** Yeah, and that's our position in this
6 case.

7 **THE COURT:** In Tennessee.

8 **MR. ALBRIGHT:** In Tennessee and --

9 **MR. YETTER:** And we believe --

10 **THE COURT:** Because we haven't discussed -- you know,
11 ICU people and this kind of thing and that kind of thing,
12 right?

13 **MR. ALBRIGHT:** Exactly. And she never did that in
14 her report. That's my point, Judge. This 25 -- when we had
15 opening statement and they popped out with the twenty --

16 **THE COURT:** We're not talking 25. I'm not thinking
17 about 25. Even though they talked about it in opening
18 statements, they wanted me to put a limit at 25 and that's --
19 you know, I don't -- I didn't see whether that was going to
20 happen. I'm going to make it ten. How's that?

21 **(Laughter)**

22 **MR. ALBRIGHT:** Okay.

23 **THE COURT:** And I'll limit your cases to ten, too.
24 How about that?

25 **(Laughter)**

1 **MR. ALBRIGHT:** You know, Judge, if you could get rid
2 of one for me, I'd be really happy.

3 **(Laughter)**

4 **THE COURT:** I wish I could, actually, talk to you-all
5 about that. But any hope?

6 **MR. ALBRIGHT:** Are you speaking to me, your Honor?
7 Or are you speaking to both sides?

8 **THE COURT:** Both sides.

9 **MR. YETTER:** We've always been ready to talk, your
10 Honor. This is an important case for the children and we're
11 prepared if the state is prepared to make good faith efforts.
12 But we've gotten nowhere.

13 **MR. ALBRIGHT:** Your Honor?

14 **THE COURT:** Is it just that you think you've got the
15 -- you've got the law on your side so you don't have to make
16 any concessions? Is that it?

17 **MR. ALBRIGHT:** Well, your Honor, I actually think
18 it's inappropriate and I saw that with all due respect. I
19 don't think it's appropriate for me to get into our analysis
20 which is a work product shared opinion with my client.

21 **THE COURT:** No. It isn't.

22 **MR. ALBRIGHT:** I think it's what pops out at the end
23 of the day and what popped out is we can't settle it on the
24 basis of any of the general parameters they suggested to us.

25 **THE COURT:** Because I don't know what their

1 suggestions have been.

2 **MR. ALBRIGHT:** And, again, I -- you know, I mean, I
3 think we crossed that bridge when we filed the Pretrial Order
4 and said we need to try our lawsuit.

5 **THE COURT:** Okay. I don't have any problem with
6 trying it. My time is your time. It's what I get paid to do.

7 **MR. ALBRIGHT:** Me, too.

8 **THE COURT:** But I just wondered -- you know, if there
9 was any changes. I'd be glad to give you time if there are.

10 **MR. YETTER:** Getting back to the question I was
11 asking Dr. Miller.

12 **BY MR. YETTER:**

13 Q Now, if you could -- in your opinion, what would be the
14 best practice range for child caseloads for the state of Texas,
15 based on everything you know?

16 **THE COURT:** That's the objection, right?

17 **MR. ALBRIGHT:** That is the objection. I mean, maybe
18 we can do it by --

19 **MR. YETTER:** That's what she's -- that's what she --

20 **MR. ALBRIGHT:** -- pointing it out in the report and
21 then --

22 **THE COURT:** Is it in her report?

23 **MR. YETTER:** I just went -- yes, your Honor. It's in
24 the report.

25 **THE COURT:** Show me. Read me the report.

1 **MR. YETTER:** Page 18 of 96. Let's go to paragraph F
2 first. Well, the first at the top, paragraph F. Her
3 professional opinion is the singularly most troubling finding
4 regarding caseloads was the total absence of a ceiling, that
5 point beyond which caseloads would not be considered
6 manageable. And she goes and talks about a little bit of the
7 testimony. The next paragraph she says, "The ceiling that I
8 used was 20 children. The caseload range that I managed to was
9 14 to 17. Anytime a caseload reached 20 --"

10 **THE COURT:** Okay. But does she have in her report
11 what she thinks is best practices for Texas for case numbers?

12 **MR. YETTER:** Well, you Honor, that's what she said --

13 **THE COURT:** Okay. Well, that's what she's already
14 said so that's it.

15 **MR. ALBRIGHT:** About Tennessee.

16 **THE COURT:** Yes.

17 **MR. YETTER:** But she was talking about what she was
18 concerned about in Texas.

19 **THE COURT:** No. I agree with that. Wait. Wait.
20 She can say I think best practices in the entire United States
21 is 14 -- is what I used, 20 case ceiling and preferably 14 to
22 17. That's what she's testified to. That's what I assume her
23 to be an expert in. But nobody is going to tell me about 25, I
24 don't think. I guess.

25 **MR. YETTER:** We will argue it, your Honor.

1 **THE COURT:** Well, you can argue it but I wouldn't
2 know where it comes from.

3 **MR. YETTER:** Well, this is our position on it, just
4 since we're on this topic. There -- we know that at some point
5 it becomes so excessive that it reflects an indifference of the
6 state to those case workers whether they can do their job for
7 these children. We believe that point is at 25.

8 **MR. ALBRIGHT:** And, your Honor, our position is
9 that's a matter of expert calculation, what is reasonable,
10 what's unreasonable, what's the number.

11 **THE COURT:** It is. The --

12 **MR. ALBRIGHT:** IC (indiscernible).

13 **MR. YETTER:** It -- it --

14 **THE COURT:** The law is clear. It's a matter of
15 professional judgment at the very minimum, not lawyers'
16 judgment.

17 **MR. ALBRIGHT:** And --

18 **THE COURT:** I agree.

19 **MR. YETTER:** Your Honor, we actually -- we believe
20 that at that point, that's a fact finding that the Court is
21 going to make. And so, what we've provided to the Court is
22 professional standards, a professional judgment by this expert
23 that she believes the best practice ceiling would be 20. But
24 our position is going to -- our position is, your Honor, that
25 when it goes -- extends beyond that to 25, it is beyond not

1 just ignoring professional standards --

2 **THE COURT:** I -- you've told me this a hundred times,
3 at least 25. We can move on from this. You know, if I make
4 this decision that there are Constitutional violations that
5 arise to that level, I may say 20 but I'm going to certainly
6 hear the government's experts that -- the state's experts on
7 what other would be factored into those case workers. You
8 know, the ICU workers, this worker, that worker, that -- you
9 know, that I've heard about that I don't know if Tennessee has.
10 Do -- does Tennessee have --

11 **THE WITNESS:** We didn't have ICU's but we had all of
12 and perhaps more than the support network that exist in Texas.

13 **THE COURT:** Okay.

14 **MR. YETTER:** Why don't you -- let's -- it's a good
15 (indiscernible)

16 **THE COURT:** You know what?

17 **THE WITNESS:** And may I say one more thing?

18 **MR. YETTER:** Sure.

19 **THE COURT:** Two minutes worth.

20 **MR. ALBRIGHT:** Maybe we could go as a Q & A format?

21 **MR. YETTER:** You have two -- you have two --

22 **MR. ALBRIGHT:** Maybe we could (indiscernible)

23 **THE WITNESS:** Oh, please don't go more minutes.

24 If -- here's the thing. If that the other structural issue
25 that I know I'll be talking about later.

1 **THE COURT:** Tomorrow.

2 **MR. YETTER:** Tomorrow.

3 **THE WITNESS:** Tomorrow.

4 **THE COURT:** Definitely.

5 **THE WITNESS:** If it would -- if that one were
6 resolved, then you don't even need those 72 ICU workers. Then
7 you've got more primary case workers in the system. I mean,
8 that's why I said -- when I started, that these things are
9 synergistic. They work together. And then if you had the --
10 if you had the resource array, then you'd have best practice
11 with your kids because your primary case workers would be able
12 to do -- would be able to work with their kids and see their
13 kids regularly. And you'd save 72 staff that could be put into
14 your -- as primary case workers and lower caseloads.

15 **THE COURT:** Okay. I think I'll let your -- I promise
16 I'll give your experts the same leeway, okay? Does that make
17 up for it?

18 **MR. ALBRIGHT:** It does. Thank you, your Honor.

19 **THE COURT:** And we're tired, and it's time to call it
20 a day. And we'll reconvene tomorrow at 8:00 and take it up
21 from there.

22 **THE CLERK:** All rise.

23 **(This proceeding was adjourned at 5:28 p.m.)**
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

January 10, 2015

TONI HUDSON, TRANSCRIBER